

AMENDED IN ASSEMBLY MAY 4, 2011

AMENDED IN ASSEMBLY APRIL 6, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## ASSEMBLY BILL

**No. 889**

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**Introduced by Assembly Members Ammiano and V. Manuel Pérez**  
**(Coauthors: Assembly Members *Allen*, *Cedillo*, *Fuentes*, *Ma*, and**  
**Monning)**

(Coauthor: Senator De León)

February 17, 2011

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An act to amend Sections 226, 3351, 3352, 3551, 3708, 3715, 6303, and 6314 of, to repeal Section 4156 of, and to add Part 4.5 (commencing with Section 1450) to Division 2 of, the Labor Code, relating to domestic work employees.

### LEGISLATIVE COUNSEL'S DIGEST

AB 889, as amended, Ammiano. Domestic work employees.

Existing law regulates the wages, hours, and working conditions of any man, woman, and minor employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, except for individuals employed as outside salesmen and individuals participating in specified national service programs. Under existing law, the Industrial Welfare Commission within the Department of Industrial Relations is authorized to adopt rules, regulations, and orders to ensure that employers comply with those provisions of law.

This bill would specially regulate the wages, hours, and working conditions of domestic work employees, as defined. Specifically, this bill would, among other things, provide a private right of action for a domestic work employee when those regulations are violated by his or

her employer; provide an overtime compensation rate for domestic work employees; ~~and require annual pay increases; paid vacation; and paid sick days for domestic work employees; and require that a domestic work employer provide written notice of termination 21 days in advance.~~ This bill would also expressly state that the provisions of Wage Order Number 15 of the Industrial Welfare Commission, with specified exceptions, apply to a domestic work employee, but would provide that these new domestic work provisions shall prevail over protections in that order or any other law that afford less protection to a domestic work employee.

Existing law requires an employer to provide its employees with specified information regarding their wages either semimonthly or at the time of each wage payment. Under existing law, this requirement does not apply to employers of persons who engage in specified types of household domestic service.

This bill would delete the exclusion for employers of persons who engage in specified types of household domestic service, thereby requiring those employers to provide the above-described information.

Existing law requires employers to carry workers' compensation insurance. The failure to secure workers' compensation as required by the workers' compensation law is a misdemeanor. Under existing law, employers of persons who engage in specified types of household domestic service and who work less than a specified number of hours are excluded from that definition of employer and are therefore excluded from the requirement to carry workers' compensation insurance, as specified.

This bill would remove that exclusion and require all domestic work employers, as defined, to carry workers' compensation insurance and would make conforming changes. By expanding the definition of a crime, this bill would impose a state-mandated local program.

Existing law, the California Occupational Safety and Health Act of 1973, requires employers to comply with certain standards ensuring healthy and safe working conditions, as specified. Under existing law, employment related to household domestic services is excluded from the provisions of the act.

This bill would remove that exclusion and require domestic work employers to comply with the requirements of the act.

The Division of Occupational Safety and Health of the Department of Industrial Relations is charged with enforcing occupational health

and safety laws, orders, and standards, including the investigation of alleged violations of those provisions.

This bill would provide a process for investigating alleged violations of the above provisions when the place of employment is a residential dwelling.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) As recognized by the State of California in Resolution  
4 Chapter 119 of the Statutes of 2010, it is the policy of the state to  
5 encourage and protect the rights of domestic work employees.

6     (b) California's domestic workers, which includes housekeepers,  
7 nannies, and caregivers for children, persons with disabilities, and  
8 the elderly, work in private households to care for the health, safety,  
9 and well-being of the most important aspects of Californians' lives:  
10 their families and homes.

11     (c) Domestic workers play a critical role in California's  
12 economy, working to ensure the health and prosperity of California  
13 families and freeing others to participate in the workforce, which  
14 is increasingly necessary in these difficult economic times. The  
15 labor of domestic workers is central to the ongoing prosperity of  
16 the state but, despite the value of their work, domestic workers  
17 have not received the same protection under state laws as workers  
18 in other industries. Most domestic workers labor to support families  
19 and children of their own, and more than half are primary income  
20 earners, but two-thirds of domestic workers earn low wages or  
21 wages below the poverty line.

22     (d) Because domestic workers care for the most important  
23 elements of their employers' lives, their families and homes, it is  
24 in the interest of employees, employers, and the people of the State

1 of California to ensure that the rights of domestic workers are  
2 respected, protected, and enforced.

3 (e) The vast majority of domestic workers are women of color  
4 and immigrants and are particularly vulnerable to unlawful  
5 employment practices and abuses. Domestic workers usually work  
6 alone, behind closed doors, and out of the public eye, leaving them  
7 isolated, vulnerable to abuse and exploitation, and unable to  
8 advocate collectively for better working conditions. Domestic  
9 workers often labor under harsh conditions, work long hours for  
10 low wages without benefits or job security, and face termination  
11 without notice or severance pay, leaving many suddenly without  
12 both a job and a home. In the worst cases, domestic workers are  
13 verbally and physically abused or sexually assaulted, forced to  
14 sleep in conditions unfit for human habitation, and stripped of their  
15 privacy and dignity.

16 (f) Domestic workers are still excluded from the most basic  
17 protections afforded the rest of the labor force under state and  
18 federal law, including the rights to fair wages, safe and healthy  
19 working conditions, workers' compensation, and protection from  
20 discriminatory and abusive treatment. The treatment of domestic  
21 workers under federal and state laws has historically reflected  
22 stereotypical assumptions about the nature of domestic work,  
23 specifically that the relationship between employer and "servant"  
24 was "personal," rather than commercial, in character, that  
25 employment within a household was not "real" productive work,  
26 and that women did not work to support their families.

27 (g) Given the limited legal protections historically provided to  
28 domestic workers, and bearing in mind the unique conditions and  
29 demands of this private, home-based industry, the Legislature, as  
30 an exercise of the police power of the State of California for the  
31 protection of the public welfare, prosperity, health, safety, and  
32 peace of its people, further finds that domestic workers are entitled  
33 to industry-specific protections and labor standards that eliminate  
34 discriminatory provisions in the labor laws and guarantee domestic  
35 workers basic workplace rights to ensure that domestic workers  
36 are treated with equality, respect, and dignity.

37 SEC. 2. Section 226 of the Labor Code is amended to read:

38 226. (a) Every employer shall, semimonthly or at the time of  
39 each payment of wages, furnish each of his or her employees,  
40 either as a detachable part of the check, draft, or voucher paying

1 the employee's wages, or separately when wages are paid by  
2 personal check or cash, an accurate itemized statement in writing  
3 showing (1) gross wages earned, (2) total hours worked by the  
4 employee, except for any employee whose compensation is solely  
5 based on a salary and who is exempt from payment of overtime  
6 under subdivision (a) of Section 515 or any applicable order of  
7 the Industrial Welfare Commission, (3) the number of piece-rate  
8 units earned and any applicable piece rate if the employee is paid  
9 on a piece-rate basis, (4) all deductions, provided that all deductions  
10 made on written orders of the employee may be aggregated and  
11 shown as one item, (5) net wages earned, (6) the inclusive dates  
12 of the period for which the employee is paid, (7) the name of the  
13 employee and his or her social security number, except that by  
14 January 1, 2008, only the last four digits of his or her social security  
15 number or an employee identification number other than a social  
16 security number may be shown on the itemized statement, (8) the  
17 name and address of the legal entity that is the employer, and (9)  
18 all applicable hourly rates in effect during the pay period and the  
19 corresponding number of hours worked at each hourly rate by the  
20 employee. The deductions made from payments of wages shall be  
21 recorded in ink or other indelible form, properly dated, showing  
22 the month, day, and year, and a copy of the statement or a record  
23 of the deductions shall be kept on file by the employer for at least  
24 three years at the place of employment or at a central location  
25 within the State of California.

26 (b) An employer that is required by this code or any regulation  
27 adopted pursuant to this code to keep the information required by  
28 subdivision (a) shall afford current and former employees the right  
29 to inspect or copy the records pertaining to that current or former  
30 employee, upon reasonable request to the employer. The employer  
31 may take reasonable steps to assure the identity of a current or  
32 former employee. If the employer provides copies of the records,  
33 the actual cost of reproduction may be charged to the current or  
34 former employee.

35 (c) An employer who receives a written or oral request to inspect  
36 or copy records pursuant to subdivision (b) pertaining to a current  
37 or former employee shall comply with the request as soon as  
38 practicable, but no later than 21 calendar days from the date of the  
39 request. A violation of this subdivision is an infraction.  
40 Impossibility of performance, not caused by or a result of a

1 violation of law, shall be an affirmative defense for an employer  
2 in any action alleging a violation of this subdivision. An employer  
3 may designate the person to whom a request under this subdivision  
4 will be made.

5 (d) An employee suffering injury as a result of a knowing and  
6 intentional failure by an employer to comply with subdivision (a)  
7 is entitled to recover the greater of all actual damages or fifty  
8 dollars (\$50) for the initial pay period in which a violation occurs  
9 and one hundred dollars (\$100) per employee for each violation  
10 in a subsequent pay period, not exceeding an aggregate penalty of  
11 four thousand dollars (\$4,000), and is entitled to an award of costs  
12 and reasonable attorney's fees.

13 (e) A failure by an employer to permit a current or former  
14 employee to inspect or copy records within the time set forth in  
15 subdivision (c) entitles the current or former employee or the Labor  
16 Commissioner to recover a seven-hundred-fifty-dollar (\$750)  
17 penalty from the employer.

18 (f) An employee may also bring an action for injunctive relief  
19 to ensure compliance with this section, and is entitled to an award  
20 of costs and reasonable attorney's fees.

21 (g) This section does not apply to the state, to any city, county,  
22 city and county, district, or to any other governmental entity, except  
23 that if the state or a city, county, city and county, district, or other  
24 governmental entity furnishes its employees with a check, draft,  
25 or voucher paying the employee's wages, the state or a city, county,  
26 city and county, district, or other governmental entity shall, by  
27 January 1, 2008, use no more than the last four digits of the  
28 employee's social security number or shall use an employee  
29 identification number other than the social security number on the  
30 itemized statement provided with the check, draft, or voucher.

31 SEC. 3. Part 4.5 (commencing with Section 1450) is added to  
32 Division 2 of the Labor Code, to read:

33  
34 **PART 4.5. DOMESTIC WORK EMPLOYEES**

35  
36 **CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS**

37  
38 1450. This part shall be known and may be cited as the  
39 Domestic Work Employee Equality, Fairness, and Dignity Act.

40 1451. As used in this part, the following definitions apply:

1 (a) “Domestic work” means services related to the care of  
2 persons in private households or maintenance of private households  
3 or their premises. Domestic work occupations include childcare  
4 providers, caregivers of sick, convalescing, or elderly persons,  
5 house cleaners, housekeepers, maids, and other household  
6 occupations.

7 (b) (1) “Domestic work employee” means an individual who  
8 performs domestic work and includes live-in domestic work  
9 employees and personal attendants.

10 (2) “Domestic work employee” does not include any of the  
11 following:

12 (A) Any person who performs services through the In-Home  
13 Supportive Services program under Article 7 (commencing with  
14 Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare  
15 and Institutions Code.

16 (B) Any person who is the parent, grandparent, spouse, child,  
17 or legally adopted child of the domestic work employer.

18 (C) Any person under 18 years of age who is employed as a  
19 babysitter for a minor child of the domestic work employer.

20 (D) *Any person employed by a licensed health facility, as defined*  
21 *in Section 1250 of the Health and Safety Code.*

22 (c) (1) “Domestic work employer” means a person, including  
23 corporate officers or executives, who directly or indirectly, or  
24 through an agent or any other person, including through the  
25 services of a third-party employer, temporary service, or staffing  
26 agency or similar entity, employs or exercises control over the  
27 wages, hours, or working conditions of a domestic work employee.

28 (2) “Domestic work employer” does not include ~~the~~ *any of the*  
29 *following:*

30 (A) *The State of California or individuals who receive domestic*  
31 *work services through the In-Home Supportive Services program*  
32 *under Article 7 (commencing with Section 12300) of Chapter 3*  
33 *of Part 3 of Division 9 of the Welfare and Institutions Code.*

34 (B) *An employment agency that is required to comply with*  
35 *Section 1812.5095 of the Civil Code and that operates solely to*  
36 *procure, offer, refer, provide, or attempt to provide work to*  
37 *domestic workers if the relationship between the employment*  
38 *agency and the domestic workers for whom the agency procures,*  
39 *offers, refers, provides, or attempts to provide domestic work is*  
40 *characterized by all of the factors listed in subdivision (b) of*

1 *Section 1812.5095 of the Civil Code and Section 687.2 of the*  
2 *Unemployment Insurance Code.*

3 (C) *A licensed health facility, as defined in Section 1250 of the*  
4 *Health and Safety Code.*

5 (d) “Emergency” means an unpredictable or unavoidable  
6 occurrence of a serious nature that occurs unexpectedly requiring  
7 immediate action.

8 (e) “Hours worked” means the time during which a domestic  
9 work employee is subject to the control of a domestic work  
10 employer, and includes all time the domestic work employee is  
11 suffered or permitted to work, whether or not required to do so.

12 (f) “Live-in domestic work employee” means a domestic work  
13 employee who lives in the establishment where he or she works.

14 (g) “Personal attendant” means a person who performs domestic  
15 work related to the supervision, feeding, or dressing of a child or  
16 other person who, by reason of advanced age, physical disability,  
17 or mental deficiency, needs supervision. Personal attendant  
18 includes babysitters. The status of “personal attendant” applies if  
19 no significant amount of work other than the foregoing is required.

20 1452. The Division of Labor Standards Enforcement shall  
21 enforce this part.

22 1453. (a) Any domestic work employee aggrieved by a  
23 violation of this part may bring an administrative action pursuant  
24 to Section 98 or may bring a civil action in a court of competent  
25 jurisdiction against the domestic work employer violating this part.

26 (b) Upon prevailing, a domestic work employee bringing an  
27 action pursuant to this section shall be entitled to any legal or  
28 equitable relief as may be appropriate to remedy the violation,  
29 including the payment of any back wages unlawfully withheld,  
30 the payment of an additional sum as liquidated damages or  
31 penalties as specified in this part, reinstatement of employment,  
32 interest, or injunctive relief, or any combination of these remedies,  
33 as appropriate. A domestic work employee bringing a civil action  
34 pursuant to this section shall also be entitled to recover an award  
35 of reasonable attorney’s fees and costs, including expert witness  
36 fees.

37 (c) The rights and remedies specified in this part are cumulative  
38 and nonexclusive and are in addition to any other rights or remedies  
39 afforded by contract or under other provisions of law. If a provision  
40 of Wage Order Number 15 of the Industrial Welfare Commission



1 or any other provision of law affords less protection to a domestic  
2 work employee, this part shall prevail.

3 (d) Notwithstanding any provision of this code or Section 340  
4 of the Code of Civil Procedure, to commence an action for a  
5 violation of this part a domestic work employee shall file an  
6 administrative or civil complaint within three years of the violation.

7  
8 CHAPTER 2. DOMESTIC WORK EMPLOYEE RIGHTS  
9

10 1454. Except where otherwise provided in this chapter, Section  
11 510 applies to a domestic work employee.

12 1455. (a) A domestic work employee who is required to be  
13 on duty for 24 consecutive hours or more shall have a minimum  
14 of eight consecutive hours for uninterrupted sleep, except in an  
15 emergency.

16 (b) If a domestic work employee is required to be on duty for  
17 24 consecutive hours or more, the domestic work employer and  
18 the domestic work employee may agree in writing to exclude a  
19 bona fide regularly scheduled sleeping period of not more than  
20 eight hours for uninterrupted sleep from hours worked, provided  
21 that the domestic work employer otherwise complies with this  
22 section and Section 1457. If no written agreement to the contrary  
23 is present, the eight hours of sleeping time shall constitute hours  
24 worked.

25 (c) There is a rebuttable presumption that a domestic work  
26 employee did not receive eight consecutive hours for uninterrupted  
27 sleep if he or she is required to be on duty for 24 consecutive hours  
28 or more and the domestic work employer does not hire a  
29 replacement worker for at least eight consecutive hours in the  
30 24-hour work period.

31 (d) A domestic work employer shall pay a sum of fifty dollars  
32 (\$50) to the domestic work employee for each day that the domestic  
33 employer violates this section.

34 1456. (a) A live-in domestic work employee who is not  
35 required to be on duty for 24 consecutive hours or more shall have  
36 at least 12 consecutive hours free of duty during each workday of  
37 24 hours, of which a minimum of eight consecutive hours are for  
38 uninterrupted sleep. A live-in domestic work employee suffered  
39 or permitted to work during the 12 consecutive off-duty hours shall  
40 be compensated in accordance with Section 510.

1 (b) A live-in domestic work employee shall not be required to  
2 work more than five days in any one workweek without a day off  
3 of not less than 24 consecutive hours, except in an emergency. A  
4 live-in domestic work employee who is suffered or permitted to  
5 work in excess of five workdays in any workweek shall be  
6 compensated in accordance with Section 510.

7 (c) A domestic work employer shall pay a sum of fifty dollars  
8 (\$50) to the domestic work employee for each day that the domestic  
9 work employer violates this section.

10 1457. Live-in domestic work employees and domestic work  
11 employees who work 24 consecutive hours or more shall be  
12 provided sleeping accommodations that are adequate, decent, and  
13 sanitary according to usual customary standards. Domestic work  
14 employees shall not be required to share a bed.

15 1458. Except as otherwise provided in this Part, the provisions  
16 of Industrial Welfare Commission Wage Order Number 15, except  
17 Section 6, shall apply to a domestic work employee.

18 ~~1459. (a) A domestic work employee shall earn a wage~~  
19 ~~increase each year on the same day of the employee's original date~~  
20 ~~of hire. The increase shall be in a percentage amount corresponding~~  
21 ~~to the prior year's percentage increase, if any, in the Consumer~~  
22 ~~Price Index for urban wage earners and clerical workers for~~  
23 ~~California as computed by the Division of Labor Statistics and~~  
24 ~~Research within the department.~~

25 ~~(b) In any action brought to recover unpaid annual cost of living~~  
26 ~~pay increases pursuant to Section 1453, a domestic work employee~~  
27 ~~shall be entitled to recover liquidated damages in an amount equal~~  
28 ~~to the wages unlawfully unpaid and interest thereon.~~

29 ~~(c) Notwithstanding subdivision (b), if the domestic work~~  
30 ~~employer demonstrates to the satisfaction of the court or the Labor~~  
31 ~~Commissioner, as applicable, that the act or omission giving rise~~  
32 ~~to the action was in good faith and that the domestic work employer~~  
33 ~~had reasonable grounds for believing that the act or omission did~~  
34 ~~not violate subdivision (a), the court or Labor Commissioner may,~~  
35 ~~in its discretion, refuse to award liquidated damages or award any~~  
36 ~~amount of liquidated damages not exceeding the amount specified~~  
37 ~~in subdivision (b).~~

38 1460. (a) A domestic work employer shall permit a domestic  
39 work employee who works five hours or more to choose the food  
40 he or she eats and to prepare his or her own meals. A domestic

1 work employer shall permit a domestic work employee to use the  
2 job site's kitchen facilities and kitchen appliances without charge  
3 or deduction from pay.

4 (b) If a domestic work employer and the domestic work  
5 employee agree that the domestic work employer will provide  
6 meals and the domestic work employer wishes to offset the costs  
7 of those meals pursuant to Industrial Welfare Commission Wage  
8 Order Number 15, the domestic work employee may request and  
9 receive specific food items for those meals.

10 (c) A domestic work employer who violates this section shall  
11 pay a sum of fifty dollars (\$50) to each domestic work employee  
12 for each day that he or she violated this section.

13 1461. (a) (1) A domestic work employee shall accrue paid  
14 vacation benefits at the rate of not less than one hour per every 30  
15 hours worked, beginning at the commencement of employment or  
16 the operative date of this provision, whichever occurs first. A  
17 domestic work employer shall permit a domestic work employee  
18 to use accrued paid vacation after one year of service. One year  
19 of service is completed on the 365th calendar day of employment.

20 (2) Unused accrued paid vacation benefits shall carry over from  
21 year to year. However, a domestic work employer may limit a  
22 domestic work employee's use of accrued paid vacation as follows:

23 (A) After the first year of service, a domestic work employee  
24 may use 40 hours or five days of paid vacation in each calendar  
25 year, whichever is greater.

26 (B) After the fifth year of service, a domestic work employee  
27 may use 80 hours or 10 days of paid vacation in each calendar  
28 year, whichever is greater.

29 (C) After the tenth year of service, a domestic work employee  
30 may use 120 hours or 15 days of paid vacation in each calendar  
31 year, whichever is greater.

32 (b) A domestic work employer shall not require, as a condition  
33 of taking paid vacation, that the domestic work employee search  
34 for or find a replacement worker to cover the hours during which  
35 the domestic work employee is on paid vacation leave.

36 (c) (1) A domestic work employee aggrieved by a violation of  
37 this section shall be entitled to all of the following:

38 (A) The amount of any paid vacation unlawfully withheld.

39 (B) A penalty of two hundred fifty dollars (\$250).

40 (C) Appropriate equitable relief.

1 (2) A domestic work employee is not aggrieved by a violation  
2 of this section if the domestic work employer can demonstrate that  
3 it denied a request to use paid vacation because of an emergency  
4 and provided another opportunity for the domestic work employee  
5 to take vacation time within three months of the date the domestic  
6 work employee originally requested to use paid vacation.

7 (d) Upon request, a domestic work employer shall provide to a  
8 domestic work employee an annual statement indicating the amount  
9 and periods of accrued vacation.

10 1462. (a) (1) A domestic work employee shall accrue paid  
11 sick days at the rate of not less than one hour per every 30 hours  
12 worked, beginning at the commencement of employment or the  
13 operative date of this provision, whichever occurs first. A domestic  
14 work employer shall permit a domestic work employee to use  
15 accrued paid sick days as they are accrued, beginning on the 90th  
16 calendar day of employment

17 (2) Unused accrued paid sick days shall carry over from year  
18 to year. However, a domestic work employer may limit a domestic  
19 work employee's use of paid sick days to 40 hours or five days in  
20 each calendar year, whichever is greater.

21 (b) (1) A domestic work employee may use accumulated sick  
22 days for the diagnosis, care, or treatment of an existing health  
23 condition; preventive care; or care and services related to domestic  
24 violence or sexual assault.

25 (2) A domestic work employee may use accumulated sick days  
26 for himself or herself, or his or her child or legal ward; parent;  
27 sibling; grandparent; grandchild; and spouse or registered domestic  
28 partner under any state or local law. The aforementioned child,  
29 parent, sibling, grandparent, and grandchild relationships include  
30 biological relationships and relationships resulting from adoption;  
31 step-relationships; legal guardianships; foster care relationships;  
32 and in loco parentis relationships. "Child" includes a child of a  
33 domestic partner.

34 (c) A domestic work employer is not required to provide  
35 compensation to a domestic work employee for accrued, unused  
36 paid sick days upon termination, resignation, retirement, or other  
37 separation from employment.

38 (d) A domestic work employer shall not require as a condition  
39 of taking paid sick days that the domestic work employee search

1 for or find a replacement worker to cover the hours during which  
2 the domestic work employee is on paid sick days.

3 (e) A domestic work employee aggrieved by a violation of this  
4 section shall be entitled to all of the following:

5 (1) Reinstatement.

6 (2) The amount of any sick days unlawfully withheld.

7 (3) A penalty equal to the amount of the paid sick days  
8 unlawfully withheld multiplied by three, or two hundred fifty  
9 dollars (\$250), whichever amount is greater.

10 (4) Appropriate equitable relief.

11 ~~1465. (a) (1) A domestic work employee is entitled to written~~  
12 ~~notice of termination 21 days before his or her final day of~~  
13 ~~employment.~~

14 ~~(2) If a domestic work employer does not provide notice of~~  
15 ~~termination as required by paragraph (1), the domestic work~~  
16 ~~employee is entitled to his or her wages for the period of violation,~~  
17 ~~up to a maximum of 21 days.~~

18 ~~(b) A domestic work employer may terminate a domestic work~~  
19 ~~employee without providing the notice required in paragraph (1)~~  
20 ~~of subdivision (a) if the termination is based on the domestic work~~  
21 ~~employee causing intentional physical or psychological harm to~~  
22 ~~the person he or she cares for or intentional physical damage to~~  
23 ~~the work premises.~~

24 SEC. 4. Section 3351 of the Labor Code is amended to read:

25 3351. "Employee" means every person in the service of an  
26 employer under any appointment or contract of hire or  
27 apprenticeship, express or implied, oral or written, whether lawfully  
28 or unlawfully employed, and includes:

29 (a) Aliens and minors.

30 (b) All elected and appointed paid public officers.

31 (c) All officers and members of boards of directors of  
32 quasi-public or private corporations while rendering actual service  
33 for the corporations for pay; provided that, where the officers and  
34 directors of the private corporation are the sole shareholders  
35 thereof, the corporation and the officers and directors shall come  
36 under the compensation provisions of this division only by election  
37 as provided in subdivision (a) of Section 4151.

38 (d) A person employed by the owner or occupant of a residential  
39 dwelling whose duties are incidental to the ownership,  
40 maintenance, or use of the dwelling, including the care and

1 supervision of children, persons of advanced age, or persons with  
2 physical or mental disabilities, or whose duties are personal and  
3 not in the course of the trade, business, profession, or occupation  
4 of the owner or occupant.

5 (e) All persons incarcerated in a state penal or correctional  
6 institution while engaged in assigned work or employment or  
7 engaged in work performed under contract.

8 (f) All working members of a partnership or limited liability  
9 company receiving wages irrespective of profits from the  
10 partnership or limited liability company, provided that where the  
11 working members of the partnership or limited liability company  
12 are general partners or managers, the partnership or limited liability  
13 company and the partners or managers shall come under the  
14 compensation provisions of this division only by election as  
15 provided in subdivision (a) of Section 4151. If a private corporation  
16 is a general partner or manager, “working members of a partnership  
17 or limited liability company” shall include the corporation and the  
18 officers and directors of the corporation, provided that the officers  
19 and directors are the sole shareholders of the corporation. If a  
20 limited liability company is a partner or member, “working  
21 members of the partnership or limited liability company” shall  
22 include the managers of the limited liability company.

23 (g) For the purposes of subdivisions (c) and (f), the persons  
24 holding the power to revoke a trust as to shares of a private  
25 corporation or as to general partnership or limited liability company  
26 interests held in the trust, shall be deemed to be the shareholders  
27 of the private corporation, or the general partners of the partnership,  
28 or the managers of the limited liability company.

29 SEC. 5. Section 3352 of the Labor Code is amended to read:

30 3352. “Employee” excludes the following:

31 (a) Any person defined in subdivision (d) of Section 3351 who  
32 is employed by his or her parent, spouse, or child.

33 (b) Any person performing services in return for aid or  
34 sustenance only, received from any religious, charitable, or relief  
35 organization.

36 (c) Any person holding an appointment as deputy clerk or deputy  
37 sheriff appointed for his or her own convenience, and who receives  
38 no compensation from the county or municipal corporation or from  
39 the citizens thereof for his or her services as the deputy. This  
40 exclusion is operative only as to employment by the county or

1 municipal corporation and does not deprive any person so  
2 deputized from recourse against a private person employing him  
3 or her for injury occurring in the course of and arising out of the  
4 employment.

5 (d) Any person performing voluntary services at or for a  
6 recreational camp, hut, or lodge operated by a nonprofit  
7 organization, exempt from federal income tax under Section 501  
8 of the Internal Revenue Code, of which he or she or a member of  
9 his or her family is a member and who receives no compensation  
10 for those services other than meals, lodging, or transportation.

11 (e) Any person performing voluntary service as a ski patrolman  
12 who receives no compensation for those services other than meals  
13 or lodging or the use of ski tow or ski lift facilities.

14 (f) Any person employed by a ski lift operator to work at a snow  
15 ski area who is relieved of and not performing any prescribed  
16 duties, while participating in recreational activities on his or her  
17 own initiative.

18 (g) Any person, other than a regular employee, participating in  
19 sports or athletics who receives no compensation for the  
20 participation other than the use of athletic equipment, uniforms,  
21 transportation, travel, meals, lodgings, or other expenses incidental  
22 thereto.

23 (h) Any person performing voluntary service for a public agency  
24 or a private, nonprofit organization who receives no remuneration  
25 for the services other than meals, transportation, lodging, or  
26 reimbursement for incidental expenses.

27 (i) Any person, other than a regular employee, performing  
28 officiating services relating to amateur sporting events sponsored  
29 by any public agency or private, nonprofit organization, who  
30 receives no remuneration for these services other than a stipend  
31 for each day of service no greater than the amount established by  
32 the Department of Personnel Administration as a per diem expense  
33 for employees or officers of the state. The stipend shall be  
34 presumed to cover incidental expenses involved in officiating,  
35 including, but not limited to, meals, transportation, lodging, rule  
36 books and courses, uniforms, and appropriate equipment.

37 (j) Any student participating as an athlete in amateur sporting  
38 events sponsored by any public agency, public or private nonprofit  
39 college, university or school, who receives no remuneration for  
40 the participation other than the use of athletic equipment, uniforms,

1 transportation, travel, meals, lodgings, scholarships, grants-in-aid,  
2 or other expenses incidental thereto.

3 (k) Any law enforcement officer who is regularly employed by  
4 a local or state law enforcement agency in an adjoining state and  
5 who is deputized to work under the supervision of a California  
6 peace officer pursuant to paragraph (4) of subdivision (a) of Section  
7 832.6 of the Penal Code.

8 (l) Any law enforcement officer who is regularly employed by  
9 the Oregon State Police, the Nevada Department of Motor Vehicles  
10 and Public Safety, or the Arizona Department of Public Safety and  
11 who is acting as a peace officer in this state pursuant to subdivision  
12 (a) of Section 830.39 of the Penal Code.

13 (m) Any person, other than a regular employee, performing  
14 services as a sports official for an entity sponsoring an  
15 intercollegiate or interscholastic sports event, or any person  
16 performing services as a sports official for a public agency, public  
17 entity, or a private nonprofit organization, which public agency,  
18 public entity, or private nonprofit organization sponsors an amateur  
19 sports event. For purposes of this subdivision, "sports official"  
20 includes an umpire, referee, judge, scorekeeper, timekeeper, or  
21 other person who is a neutral participant in a sports event.

22 (n) Any person who is an owner-builder, as defined in  
23 subdivision (a) of Section 50692 of the Health and Safety Code,  
24 who is participating in a mutual self-help housing program, as  
25 defined in Section 50087 of the Health and Safety Code, sponsored  
26 by a nonprofit corporation.

27 SEC. 6. Section 3551 of the Labor Code is amended to read:

28 3551. (a) Every employer subject to the compensation  
29 provisions of this code shall give every new employee, either at  
30 the time the employee is hired or by the end of the first pay period,  
31 written notice of the information contained in Section 3550. The  
32 content of the notice required by this section shall be prescribed  
33 by the administrative director after consultation with the  
34 Commission on Health and Safety and Workers' Compensation.

35 (b) The notice required by this section shall be easily  
36 understandable and available in both English and Spanish. In  
37 addition to the information contained in Section 3550, the content  
38 of the notice required by this section shall include:

39 (1) Generally, how to obtain appropriate medical care for a job  
40 injury.



1 (2) The role and function of the primary treating physician.

2 (3) A form that the employee may use as an optional method  
3 for notifying the employer of the name of the employee's "personal  
4 physician," as defined by Section 4600, or "personal chiropractor,"  
5 as defined by Section 4601.

6 (c) The content of the notice required by this section shall be  
7 made available to employers and insurers by the administrative  
8 director. Insurers shall provide this notice to each of their  
9 policyholders, with advice concerning the requirements of this  
10 section and the penalties for a failure to provide this notice to all  
11 employees.

12 SEC. 7. Section 3708 of the Labor Code is amended to read:

13 3708. In such action it is presumed that the injury to the  
14 employee was a direct result and grew out of the negligence of the  
15 employer, and the burden of proof is upon the employer, to rebut  
16 the presumption of negligence. It is not a defense to the employer  
17 that the employee was guilty of contributory negligence, or  
18 assumed the risk of the hazard complained of, or that the injury  
19 was caused by the negligence of a fellow servant. No contract or  
20 regulation shall restore to the employer any of the foregoing  
21 defenses.

22 SEC. 8. Section 3715 of the Labor Code is amended to read:

23 3715. (a) Any employee whose employer has failed to secure  
24 the payment of compensation as required by this division, or his  
25 or her dependents in case death has ensued, may, in addition to  
26 proceeding against his or her employer by civil action in the courts  
27 as provided in Section 3706, file his or her application with the  
28 appeals board for compensation and the appeals board shall hear  
29 and determine the application for compensation in like manner as  
30 in other claims and shall make the award to the claimant as he or  
31 she would be entitled to receive if the employer had secured the  
32 payment of compensation as required, and the employer shall pay  
33 the award in the manner and amount fixed thereby or shall furnish  
34 to the appeals board a bond, in any amount and with any sureties  
35 as the appeals board requires, to pay the employee the award in  
36 the manner and amount fixed thereby.

37 (b) (1) In any claim in which it is alleged that the employer has  
38 failed to secure the payment of compensation, the director, only  
39 for purposes of this section and Section 3720, shall determine, on  
40 the basis of the evidence available to him or her, whether the

1 employer was prima facie illegally uninsured. A finding that the  
2 employer was prima facie illegally uninsured shall be made when  
3 the director determines that there is sufficient evidence to constitute  
4 a prima facie case that the employer employed an employee on  
5 the date of the alleged injury and had failed to secure the payment  
6 of compensation, and that the employee was injured arising out  
7 of, and occurring in the course of, the employment.

8 (2) Failure of the employer to furnish within 10 days the written  
9 statement in response to a written demand for a written statement  
10 prescribed in Section 3711, addressed to the employer at its address  
11 as shown on the official address record of the appeals board, shall  
12 constitute in itself sufficient evidence for a prima facie case that  
13 the employer failed to secure the payment of compensation.

14 (3) A written denial by the insurer named in the statement  
15 furnished by the employer as prescribed in Section 3711, that the  
16 employer was so insured as claimed, or the nonexistence of a valid  
17 certificate of consent to self-insure for the time of the claimed  
18 injury, if the statement furnished by the employer claims the  
19 employer was self-insured, shall constitute in itself sufficient  
20 evidence for a prima facie case that the employer had failed to  
21 secure the payment of compensation.

22 (4) The nonexistence of a record of the employer's insurance  
23 with the Workers' Compensation Insurance Rating Bureau shall  
24 constitute in itself sufficient evidence for a prima facie case that  
25 the employer failed to secure the payment of compensation.

26 (5) The un rebutted written declaration under penalty of perjury  
27 by the injured employee, or applicant other than the employee,  
28 that the employee was employed by the employer at the time of  
29 the injury, and that he or she was injured in the course of his or  
30 her employment, shall constitute, in itself, sufficient evidence for  
31 a prima facie case that the employer employed the employee at  
32 the time of the injury, and that the employee was injured arising  
33 out of, and occurring in the course of, the employment.

34 (c) (1) When the director determines that an employer was  
35 prima facie illegally uninsured, the director shall mail a written  
36 notice of the determination to the employer at his or her address  
37 as shown on the official address record of the appeals board, and  
38 to any other more recent address the director may possess. The  
39 notice shall advise the employer of its right to appeal the finding,  
40 and that a lien may be placed against the employer's and any parent

1 corporation's property, or the property of substantial shareholders  
2 of a corporate employer as defined by Section 3717.

3 (2) Any employer aggrieved by a finding of the director that it  
4 was prima facie illegally uninsured may appeal the finding by  
5 filing a petition before the appeals board. The petition shall be  
6 filed within 20 days after the finding is issued. The appeals board  
7 shall hold a hearing on the petition within 20 days after the petition  
8 is filed with the appeals board. The appeals board shall have  
9 exclusive jurisdiction to determine appeals of the findings by the  
10 director, and no court of this state has jurisdiction to review, annul,  
11 or suspend the findings or the liens created thereunder, except as  
12 provided by Article 2 (commencing with Section 5950) of Chapter  
13 7 of Part 4 of Division 4.

14 (d) (1) Any claim brought against an employer under this  
15 section may be resolved by the director by compromise and release  
16 or stipulated findings and award as long as the appeals board has  
17 acquired jurisdiction over the employer and the employer has been  
18 given notice and an opportunity to object.

19 (2) Notice may be given by service on the employer of an  
20 appeals board notice of intention to approve the compromise and  
21 release or stipulated findings and award. The employer shall have  
22 20 days after service of the notice of intention to file an objection  
23 with the appeals board and show good cause therefor.

24 (3) If the employer objects, the appeals board shall determine  
25 if there is good cause for the objection.

26 (4) If the appeals board finds good cause for the objection, the  
27 director may proceed with the compromise and release or stipulated  
28 findings and award if doing so best serves the interest of the  
29 Uninsured Employers Fund, but shall have no cause of action  
30 against the employer under Section 3717 unless the appeals board  
31 case is tried to its conclusion and the employer is found liable.

32 (5) If the appeals board does not find good cause for the  
33 objection, and the compromise and release or stipulated findings  
34 and award is approved, the Uninsured Employers Fund shall have  
35 a cause of action against the employer pursuant to Section 3717.

36 (e) The director may adopt regulations to implement and  
37 interpret the procedures provided for in this section.

38 SEC. 9. Section 4156 of the Labor Code is repealed.

39 SEC. 10. Section 6303 of the Labor Code is amended to read:

1     6303. (a) “Place of employment” means any place, and the  
2 premises appurtenant thereto, where employment is carried on,  
3 except a place where the health and safety jurisdiction is vested  
4 by law in, and actively exercised by, any state or federal agency  
5 other than the division.

6     (b) “Employment” includes the carrying on of any trade,  
7 enterprise, project, industry, business, occupation, or work,  
8 including all excavation, demolition, and construction work, or  
9 any process or operation in any way related thereto, in which any  
10 person is engaged or permitted to work for hire.

11     (c) “Employment,” for purposes of this division only, also  
12 includes volunteer firefighting when covered by Division 4  
13 (commencing with Section 3200) pursuant to Section 3361.

14     (d) Subdivision (c) shall become operative on January 1, 2004.

15     SEC. 11. Section 6314 of the Labor Code is amended to read:

16     6314. (a) To make an investigation or inspection, the chief of  
17 the division and all qualified divisional inspectors and investigators  
18 authorized by him or her shall, upon presenting appropriate  
19 credentials to the employer, have free access to any place of  
20 employment to investigate and inspect during regular working  
21 hours, and at other reasonable times when necessary for the  
22 protection of safety and health, and within reasonable limits and  
23 in a reasonable manner. The chief or his or her authorized  
24 representative may, during the course of any investigation or  
25 inspection, obtain any statistics, information, or any physical  
26 materials in the possession of the employer that are directly related  
27 to the purpose of the investigation or inspection, conduct any tests  
28 necessary to the investigation or inspection, and take photographs.  
29 Photographs taken by the division during the course of any  
30 investigation or inspection shall be considered to be confidential  
31 information pursuant to the provisions of Section 6322, and shall  
32 not be deemed to be public records for purposes of the California  
33 Public Records Act.

34     (b) If permission to investigate or inspect the place of  
35 employment is refused, or the facts or circumstances reasonably  
36 justify the failure to seek permission, the chief or his or her  
37 authorized representative may obtain an inspection warrant  
38 pursuant to the provisions of Title 13 (commencing with Section  
39 1822.50) of the Code of Civil Procedure. Cause for the issuance  
40 of a warrant shall be deemed to exist if there has been an industrial

1 accident, injury, or illness reported, if any complaint that violations  
2 of occupational safety and health standards exist at the place of  
3 employment has been received by the division, or if the place of  
4 employment to be inspected has been chosen on the basis of  
5 specific neutral criteria contained in a general administrative plan  
6 for the enforcement of this division.

7 (c) The chief and his or her authorized representatives may issue  
8 subpoenas to compel the attendance of witnesses and the  
9 production of books, papers, records, and physical materials,  
10 administer oaths, examine witnesses under oath, take verification  
11 or proof of written materials, and take depositions and affidavits  
12 for the purpose of carrying out the duties of the division.

13 (d) In the course of any investigation or inspection of an  
14 employer or place of employment by an authorized representative  
15 of the division, a representative of the employer and a  
16 representative authorized by his or her employees shall have an  
17 opportunity to accompany him or her on the tour of inspection.  
18 Any employee or employer, or their authorized representatives,  
19 shall have the right to discuss safety and health violations or safety  
20 and health problems with the inspector privately during the course  
21 of an investigation or inspection. Where there is no authorized  
22 employee representative, the chief or his or her authorized  
23 representatives shall consult with a reasonable number of  
24 employees concerning matters of health and safety of the place of  
25 employment.

26 (e) During any investigation of an industrial accident or  
27 occupational illness conducted by the division pursuant to the  
28 provisions of Section 6313, the chief or his or her authorized  
29 representative may issue an order to preserve physical materials  
30 or the accident site as they were at the time the accident or illness  
31 occurred if, in the opinion of the division, it is necessary to do so  
32 in order to determine the cause or causes of the accident or illness,  
33 and the evidence is in potential danger of being removed, altered,  
34 or tampered with. Under these circumstances, the division shall  
35 issue that order in a manner that will avoid, to the extent possible,  
36 any interference with normal business operations.

37 A conspicuous notice that an order has been issued shall be  
38 prepared by the division and shall be posted by the employer in  
39 the area or on the article to be preserved. The order shall be limited

1 to the immediate area and the machines, devices, apparatus, or  
2 equipment directly associated with the accident or illness.

3 Any person who knowingly violates an order issued by the  
4 division pursuant to this subdivision shall, upon conviction, be  
5 punished by a fine of not more than five thousand dollars (\$5,000).

6 (f) (1) In the case where the place of employment is a residential  
7 dwelling, the chief of the division or his or her authorized  
8 representative shall initiate telephone contact with the employer  
9 as soon as possible, but not later than three working days after  
10 receipt of a complaint charging a serious violation, as described  
11 in Section 6309, and not later than 14 calendar days after receipt  
12 of a complaint charging a nonserious violation.

13 (2) When telephone contact is successfully made, the chief of  
14 the division or his or her authorized representative shall do all of  
15 the following:

16 (A) Notify the employer of the existence of any allegedly unsafe  
17 or unhealthful conditions.

18 (B) Describe the alleged hazard and any specific regulatory  
19 standard alleged to have been violated.

20 (C) Inform the employer that he or she is required pursuant to  
21 Section 6401.7 to investigate and abate any hazard discovered  
22 during the investigation.

23 (D) Inform the employer by letter sent by facsimile or electronic  
24 mail, or by certified mail if the domestic work employer cannot  
25 receive facsimile or electronic mail, of each alleged hazard and  
26 each specific standard alleged to have been violated.

27 (E) Inform the employer that if the division determines that the  
28 employer's response is unsatisfactory for any reason, the division  
29 shall seek permission from the employer to enter the residential  
30 dwelling to investigate the matter, and, if permission is denied,  
31 may secure a court order to conduct an onsite inspection of the  
32 residential dwelling.

33 (F) Provide the complainant with copies of the regulation alleged  
34 to have been violated, the division's letter to the employer, and all  
35 subsequent correspondence concerning the investigation of any  
36 hazards.

37 (3) An employer subject to investigation shall do both of the  
38 following:

39 (i) Provide to the division, within 14 days of the employer's  
40 receipt of the division's letter, a letter describing the results of the

1 employer's investigation of the alleged hazards and a description  
2 of all actions taken, in the process of being taken, or planned to  
3 be taken, by the employer to abate the alleged hazard, including  
4 any applicable measurements or monitoring results, invoices for  
5 equipment purchased, and photographs or video that document  
6 correction of the alleged hazard.

7 (ii) Provide a copy of the division's letter to the employer, and  
8 all subsequent correspondence from and to the employer, to the  
9 affected employee, or prominently post the letter and  
10 correspondence in the method prescribed by subdivision (a) of  
11 Section 6318.

12 SEC. 12. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.